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Abstract Title: Is Obesity Really the Next Tobacco? Lessons Learned from Tobacco for Obesity Litigation

Abstract: A recent development in the legal field is what many are calling the next “tobacco”-personal liability and consumer protection litigation against the food industry for allegedly making individuals obese by selling and marketing unhealthy food. The objectives of this paper were to determine (1) whether useful lessons could be drawn for obesity litigation from experiences with tobacco litigation in the U.S. and (2) whether, based on those lessons, obesity will likely be the next tobacco. To draw the lessons, overviews of the obesity and tobacco epidemics and associated efforts in litigation were provided. An analogical reasoning framework consisting of six diagnostic questions was then applied to the two situations. The analysis suggests that several useful lessons can be drawn from tobacco for obesity litigation. First, the similarities and differences that exist between the obesity and tobacco situations demonstrate that the stakes associated with pursuing obesity litigation are very high. Tobacco litigation suggests that the chances of success for obesity suits are low and that litigation alone will not substantially impact the obesity epidemic. Additionally, experiences with tobacco litigation show that obesity suits, if pursued, should focus on consumer protection claims and that a multi-pronged approach should be used to address the obesity epidemic. However, the analysis demonstrates that there could be serious risks associated with filing consumer protection suits against and reaching settlements with the food industry. For these reasons, in contrast to what some plaintiffs’ attorneys are predicting, it is unlikely that obesity will become the next tobacco.